

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DARRYL L. JONES,

Petitioner,

vs.

BRIAN WILLIAMS, SR., *et al.*,

Respondents.

2:13-cv-01840-GMN-NJK

ORDER

Petitioner has filed a habeas petition without properly commencing the action by paying the filing fee or filing a pauper application. It does not appear that a dismissal without prejudice will result in a promptly filed new action being untimely.¹

The present improperly-commenced action therefore will be dismissed without prejudice to

¹The papers on file and the online docket records of the state courts reflect the following.

Petitioner Darryl Jones seeks to challenge his judgment of conviction, pursuant to a jury verdict and as amended, in No. C251297 of five counts of burglary, one count of attempted theft, five counts of obtaining and using the personal identification information of another, two counts of theft, two counts of grand larceny auto, and one count of possession or sale of a document or personal identifying information to establish false status or identity.

The original judgment of conviction was affirmed in part and reversed in part on direct appeal in No. 55508 on November 5, 2010, and an amended judgment of conviction was filed on December 8, 2010. Petitioner filed a state post-conviction petition on or about December 21, 2010, prior to the expiration of the time for any appeal from the amended judgment of conviction and for filing a *certiorari* petition. The state petition thereafter was pending continuously through April 8, 2013, when the state supreme court issued the remittitur after affirming the denial of state post-conviction relief in No. 61437.

The federal limitation period therefore did not begin to run until after April 8, 2013. Several months therefore remain within which to timely and properly commence a federal habeas action. (The Court has reviewed state supreme court proceedings in Nos. 54831, 58014, 58052, 59206, 63240, and 63303, and the proceedings have no material impact on the analysis of the running of the federal limitation period.)

Petitioner at all times remains responsible for calculating the running of the federal limitation period as applied to his case and properly commencing a timely-filed federal habeas action or other proceeding with exhausted claims.

1 the filing of a new action.

2 **IT THEREFORE IS ORDERED** that this action is **DISMISSED without prejudice** to the
3 filing of a new petition in a new action accompanied by either the required \$5.00 filing fee or a
4 properly completed application to proceed *in forma pauperis*.

5 **IT FURTHER IS ORDERED** that all pending motions are **DENIED without prejudice**.

6 **IT FURTHER IS ORDERED** that a certificate of appealability is **DENIED**. Jurists of
7 reason would not find the dismissal of this improperly-commenced action without prejudice to be
8 debatable or wrong. The current dismissal will not result in a promptly-filed new action being
9 untimely or otherwise cause substantial prejudice. See note 1, *supra*.

10 **IT FURTHER IS ORDERED** that the Clerk shall send petitioner two copies each of an
11 application form to proceed *in forma pauperis* for incarcerated persons and a noncapital habeas
12 petition form, one copy of the instructions for each form, and a copy of the papers that he submitted
13 in this action.

14 The Clerk of Court shall enter final judgment accordingly, dismissing this action without
15 prejudice.

16 DATED this 23rd day of October, 2013.

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21 Gloria M. Navarro
22 United States District Judge
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